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OFFICE OF PETITIONS

In re Application of	:	
Raymond Bell, et al.	:	
Application No. 10/051,122	:	DECISION GRANTING PETITION
Filed: January 22, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 040092-009400US	:	

This is a decision on the petition, filed June 5, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on January 22, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.


The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of December 4, 2003 accompanies this decision on petition.

An oath or declaration in compliance with 37 CFR 1.63 is required in this application, since the citizenship of the third inventor was not identified. A Notice of Informal Application (Notice) pertaining to such was to be mailed to petitioner, but inadvertently, the Notice was never mailed. A copy of this Notice is attached herewith. Petitioner should note that the Notice states that the oath or declaration "does not identify the citizenship of each inventor." However, a cursory review of the declaration shows that only the citizenship of the third inventor is not given. In view of the above, petitioner is given TWO (2) MONTHS from the date of this decision to file an oath or declaration complying with 37 CFR 1.63 and to pay the \$130 surcharge set forth in 37 CFR 1.16(e). This time period may be extended pursuant to the provisions of 37 CFR 1.136(a). The oath or declaration should identify the specification to which it is directed by reference to the above application number and filing date. The reply should be directed to the attention of the Office of Initial Patent Examination. **Failure to respond will again result in the abandonment of the application.**

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.

This application is being forwarded to the Office of Initial Patent Examination to await a supplemental declaration in compliance with 37 CFR 1.63.


Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENTS: Notice Regarding Rescission of Nonpublication Request
Copy of un-mailed Notice of Informal Application